

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1185 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

VASANTRI B SHETH

Versus

COMPETENT AUTHORITY AND DY COLLECTOR (ULC), RAJKOT
& ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/07/96

ORAL JUDGEMENT

The order passed by the Competent Authority at
Rajkot (respondent No. 1 herein) on 4th November 1984
under sec. 8(4) of the Urban Land (Ceiling and

Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 10th October 1988 in Appeal No. Rajkot-17 of 1985 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 382.78 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. Therein he also indicated that his wife had a share in one land bearing survey No. 402 situated within the urban agglomeration of Rajkot. That form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 4th November 1984 under sub-section (4) thereof respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 382.78 square meters. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-17 of 1985. It was heard along with another appeal bearing No. Rajkot-20 of 1985. By the common appellate order passed on 10th October 1988 in the aforesaid two appeals, respondent No. 2 dismissed both the appeals. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. Learned Advocate Shri Nanavaty for the petitioner is right in his submission that the house property could not have been included in the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It transpires from the impugned orders at Annexures B and C to this petition that the house property admeasuring 220 square meters has been included in the petitioner's holding. That could not have been done in view of the aforesaid binding ruling of the Supreme Court. It deserves to be excluded from his holding.

4. The other grievance voiced by learned Advocate Shri Nanavaty for the petitioner is to the effect that

the petitioner's wife had her one-fourth share in one land bearing survey No. 402 in all admeasuring 2 acres within the urban agglomeration of Rajkot. It has been urged that the land in question was purchased by her in partnership with one Indiraben. Later on some time in 1969 his wife entered into sub-partnership with one Popatlal dividing her share in the aforesaid land in equal proportion between the two sub-partners. In view of this factual position, according to learned Advocate Shri Nanavaty for the petitioner, the share of the wife of the petitioner in the land in question would be only 25% and not 50%. He has further submitted that the partnership firm consisting of the petitioner's wife and the said Indiraben had also filed their declaration as an association of persons under sec. 6(1) of the Act. That was also processed by respondent No. 1. By his order passed on 4th January 1985 under sec. 8(4) of the Act, respondent No. 1 declared the holding of the partnership firm to be in excess of the ceiling limit by 6594 square meters. That matter was also carried in appeal by means of Appeal No. Rajkot-20 of 1985. By the common judgment at Annexure C to this petition, that appeal came to be dismissed. Under the order passed by respondent No. 1 in that case, the partnership firm was permitted to retain 1500 square meters. The share of the wife of the petitioner therein was taken to be 750 square meters. According to learned Advocate Shri Nanavaty for the petitioner, her share therein would be 375 square meters in view of the sub-partnership between her and one Popatlal executed some time in 1969.

5. Learned Assistant Government Pleader Shri Sompura for the respondents has informed me that one official from the office of respondent No. 1 is present with the record of the case. He has fairly shown the record to me. On perusal thereof, it is found that the petitioner in his declaration in the prescribed form under sec. 6(1) of the Act had indicated that his wife had her share in the aforesaid land bearing survey No. 402 situated within the urban agglomeration of Rajkot. He had produced with the declaration both the partnership agreement between his wife and Indiraben and sub-partnership agreement between his wife and said Popatlal. In that view of the matter, the share of the wife of the petitioner in the aforesaid land was 25% and not 50%. From the retainable land of 1500 square meters, the share given to the wife of the petitioner would be 375 square meters and not 750 square meters as found by the authorities below.

6. In view of my aforesaid discussion, I am of the

opinion that the area represented by the house property to the extent of 220 square meters deserves to be excluded from the holding of the petitioner in view of the aforesaid binding ruling of the Supreme Court. His wife's share in the retainable land from survey No. 402 situated within the urban agglomeration of Rajkot deserves to be taken as 375 square meters as against 750 square meters taken to be so by the authorities below. Thus, the petitioner's holding deserves to be reduced by in all 595 square meters. Respondent No. 1 has found his total holding to be 1882.78 square meters. If it is reduced by 595 square meters, it will come down to 1287.78 square meters. The prescribed ceiling limit for the urban agglomeration of Rajkot is 1500 square meters. His holding can therefore be said to be within the ceiling limit. The impugned orders at Annexures B and C to this petition therefore deserve to be quashed and set aside qua the petitioner herein.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot on 4th November 1984 at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad inter alia in Appeal No. Rajkot-17 of 1985 on 10th October 1988 at Annexure C to this petition is quashed and set aside. It is hereby declared that the petitioner's holding is not in excess of the ceiling limit under the Act. Rule is accordingly made absolute with no order as to costs.
